

-#-

.FO 1

Date of Decision: 7th October 1995

SPECIAL CIVIL APPLICATION NO. 3342 of 1994

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not?
No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri A.J. Patel, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondent

CORAM: A.N. DIVECHA, J.
(Date: 7th October 1995)

ORAL JUDGMENT

The order passed by the Deputy Secretary (Appeals), Revenue of Department at Ahmedabad on behalf of the State of Gujarat (the respondent herein) on 8th February 1994 is under challenge in this petition under Art. 226 of the Constitution of India. By the impugned order, the N.A. permission granted to the petitioner by the order passed on 30th May 1991 by the

District Development Officer of Sabarkantha District at Himatnagar with respect to a parcel of land bearing Survey No. 1579 situated at Vadali Taluka Idar (the disputed land for convenience) came to be set aside in exercise of the powers under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief).

2. The facts giving rise to this petition move in a narrow compass. The petitioner applied for N.A. permission to the District Panchayat with respect to the disputed land. By the order passed on 30th May 1991 by the District Development Officer at Himatnagar, such permission came to be granted on certain terms and conditions. Its copy is at Annexure A to this petition. It appears to have come to the notice of the concerned officer of the respondent. He appears to have found it not according to law. Its suo motu revision under sec. 211 of the Code was therefore contemplated. Apropos, a show-cause notice came to be issued on 3rd August 1991 calling upon the petitioner to show cause why the N.A. permission at Annexure A to this petition should not be cancelled. A copy of the aforesaid show-cause notice is at Annexure C to this petition. The petitioner filed his reply thereto on 13th December 1991. Its copy is at Annexure D to this petition. The petitioner also produced before the author of the show-cause notice one certificate issued by the Nagar Panchayat of Vadali indicating that the petitioner's land was situated within the town site, that is, within the constructed area of the town. A copy of the aforesaid certificate is at Annexure F to this petition. By the order passed by and on behalf of the respondent on 8th February 1994 under sec. 211 of the Code, the permission at Annexure A to this petition came to be set aside. A copy of the aforesaid order passed on 8th February 1994 is at Annexure H to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. The ground on which the N.A. permission at Annexure A to this petition is cancelled is to the effect that the construction proposed to be raised pursuant to the N.A. permission at Annexure A to this petition was within the building line as provided in the Ribbon Development Rules (the Rules for convenience) framed under Sec. 492(1) of the Code of Criminal Procedure, 1898. A copy of the Rules is at Annexure B to this petition. It is not in dispute that the disputed land is abutting on the State Highway between Ambaji and Idar. In view of the Table given in the Rules, the building line is 40 meters from the centre of the road. There is however a provision in Rule 3(2) thereof to the effect that, if the land is situated in the village site (or in the town site), the building line would be as shown in Col. 5 thereof which is shown to be 24 meters from the centre of the road. It has been

provided in Rule 3(7) thereof that, if the road takes turn in that area or the land in question is on the curve, the building line would be 20% more than what is shown in the Table.

4. The petitioner has filed an additional affidavit annexing therewith certain documents. One document is a certificate issued by the Gram Panchayat of Vadali (it appears to have been converted from a nagar panchayat to a gram panchayat) indicating that the disputed land is situated in the village site. In that view of the matter, the building line in accordance with the Table given in the Rules would be 24 meters from the centre of the road. It is not in dispute that the land is situated or rather abutting on the curvature of the road and in view of Rule 3(7) thereof 20% will have to be added to the building line. In that case, the building line would be 28.8 meters from the centre of the road. It transpires from the record that the petitioner has made construction at a distance of 29 meters from the centre of the road. In that view of the matter, the petitioner cannot be said to have made any breach of any provision of the Ribbon Development Rules. The contrary conclusion reached by the author of the order at Annexure H to this petition cannot therefore be sustained in law. It deserves to be quashed and set aside.

5. In the result, this petition is accepted. The order passed by and on behalf of the State of Gujarat on 8th February 1994 at Annexure H to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
